IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

TRC.No. 46 of 1999()

TA.94/1988 of S.T.A.TRIBUNAL,ADDL.BENCH,KOZHIKODE.
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REVISION PETITIONER: RESPONDENT - REVENUE

DY. COMMISSIONER, LAW,
COMMERCIAL TAXES, ERNAKULAM.

BY SPL. GOVERNMENT PLEADER (TAXES) SRI V.V.ASHOKAN

RESPONDENTS: APPELLANT - ASSESSEE

K.P.LID HAJI, FATHIMA COTTAGE, (DIED)
MANNA, BALIAPATTAM.

LEGAL REPRESENTATIVES OF THE DECEASED RESPOSNDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 2 TO 9 AS PER ORDER DT. 20.6.2001 INCMP 4717/2002.

ADDL.R.2. B.PATHUMMA, W/O. K.P. KHALID, FATHIM COTTAGE,
MANNA, BALIAPATTAM, KANNUR.

3. K.P.ABDUL SATHAR, S/O.KHALID, FATHIM COTTAGE,
MANNA, BALIAPATTAM, KANNUR.

4. K.P.ABDUL SHUKUR, S/O.KHALID, FATHIM COTTAGE,
MANNA, BALIAPATTAM, KANNUR.

5. K.P.HARIS, S/O.KHALID, FATHIM COTTAGE,
MANNA, BALIAPATTAM, KANNUR.

6. K.P.MOSSANKUTTY, S/O.KHALID, FATHIM COTTAGE,
MANNA, BALIAPATTAM, KANNUR.

7. K.P.THAJUDEEN, S/O.KHALID, FATHIM COTTAGE,
MANNA, BALIAPATTAM, KANNUR.

8. K.P. IYSHABI, D/O..KHALID, FATHIM COTTAGE,
MANNA, BALIAPATTAM, KANNUR.

9. K.P.RAMLATH, D/O..KHALID, FATHIM COTTAGE,

MANNA, BALIAPATTAM, KANNUR.

BY ADV. SRI T.M.SREEDHARAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 20/06/2007, ALONG WITH TRC NO.49 OF 1999, TRC NO. 50 OF 1999, TRC NO. 51 OF 1999, TRC NO. 57 OF 1999 AND TRC NO. 58 OF 1999, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

T.R.C. Nos. 46, 49, 50, 51, 57 & 58 of 1999

Dated, this the 20th day of June, 2007

ORDER

H.L. DATTU, CJ.

Since the parties are common in all these revision petitions, they are heard and disposed of by this common order.

2. The assessment years in question are 1981-82 and 1983-84. M/s Aries Spices is a dealer registered under the provisions of the Kerala General Sales Tax Act (KGST Act, for short) and the Central Sales Tax Act (CST Act, for short).

3. One Mr. Abdul Rehman applied for registration to register "M/s.Aries, Spices" as a dealer under the KGST Act. The request was accepted by the registering authority and a registration certificate was granted on 20.10.1981. Subsequently the said certificate came to be cancelled on 17.6.1983.

4. The assessing authority for the assessment years 1981-82 and 1983-84 had completed assessments both under the KGST Act and the CST Act. The assessment was against M/s. Aries, Spices, represented by Sri. Abdul Rehman.

5. Aggrieved by the assessment orders so passed, M/s.Aries, Spices by its proprietor Sri. Abdul Rehman filed appeals before the first appellate authority. The appellate authority, after considering the claim and the counter claim of the assessee and the department, was pleased to allow the appeal and has remanded the matter to the assessing authority to re-do the assessment in accordance with law.

6. After such remand, the assessing authority has not passed any fresh

assessment orders against M/s Aries Species represented by its Proprietor, Mr.Abdul Rehman.

7. The department had taken up certain investigations into the dealings of M/s.Aries, Spices. After such investigation they have found out that one Mr.K.P.Khalid Haji and Mr. K.P.Abdul Sathar were the persons who were really doing the business for M/s.Aries, Spices and Mr.Abdul Rehman who had taken the registration certificate for M/s.Aries, Spices is only a name-lender. After such investigations the assessing authority has passed fresh assessment orders against Mr. K.P. Khalid Haji and Mr. K.P. Abdul Sathar as persons representing M/s Aries Spices. The orders of assessment so passed is dated 8.9.1986. In the said order, the assessing authority has observed in too many places that Mr. K.P.Khalid Haji and Mr.K.P.Abdul Sathar are the persons who were actually conducting the business for M/s.Aries, Spices and Mr. Abdul Rehman was a person having no financial capacity nor social background to do such a voluminous business. The assessing authority had also given various other reasons to come to the conclusion that Mr.Abdul Rehman was only a name-lender and K.P.Khalid Haji and K.P.Abdul Sathar were the persons who were actually doing the business for M/s.Aries, Spices. Accordingly, he had proceeded to complete the assessment against M/s.Aries, Spices, represented by Mr. Khalid Haji and K.P. Abdul Sathar. Even the fresh assessment orders were questioned by Mr. Khalid Haji and Mr. Abdul Sathar before the first appellate authority. The appellate authority has confirmed the orders passed by the assessing authority. The said order was questioned by Mr. Khalid Haji and Mr. Abdul Sathar before the Appellate Tribunal. The Tribunal has set aside the orders passed by the first appellate authority and also the assessing authority. Questioning the correctness

or otherwise of the said order passed by the Tribunal, the revenue is before us in these tax revision cases.

8. Before we proceed further, there is yet another factual matrix which requires to be noticed. Before passing the fresh assessment orders for the assessment years in question, proposition notices had been issued by the assessing authority to Mr. Khalid Haji and Mr. Abdul Sathar. Those notices had been questioned by the aforesaid persons before this court in O.P.No.6667/1986. This court, while rejecting the writ petition, was pleased to observe that the Act does not prevent or prohibit the assessing authority to complete the assessment against the proper persons.

9. The revenue in these tax revision cases has raised the following questions of law for our consideration and decision: They are as under:

> "a) Is not the order of the Tribunal perverse and erroneous in view of its excessive and improper exercise of the second appellate jurisdiction vested in it by law?
> b) Is not the Tribunal in error in upsetting the well considered factual findings of the lower authorities without assigning good reasons how the reasoning of the lower authorities are erroneous and liable to be interfered in second appeal?"

10. Shri Ashokan, learned Spl. Government Pleader (Taxes) appearing for the revenue would submit that the Tribunal was not justified in setting aside the reasoned fresh assessment orders passed by the assessing authority and a beautiful order passed by the first appellate authority. The learned counsel would further submit that under sec.17 of the Act, the assessing authority can proceed to assess a registered dealer or a person liable to be registered under the Act. In

the instant case, according to the learned counsel, the assessing authority has completed the assessment against those persons who are liable to be registered under the Act and, therefore, the Tribunal should not have taken exception to the fresh assessment orders passed by the assessing authority for the assessment years 1981-82 and 1983-84 dated 8.9.1986.

11. Apart from these, the learned counsel would submit that the Tribunal, without assigning proper reasons, should not have set aside the order passed by the first appellate authority confirming the orders passed by the assessing authority.

12. The learned counsel appearing for the respondents ably justified the impugned order passed by the Tribunal.

13. Having noticed the facts in detail, the question that would arise for considerations are as under:

> i) Whether the assessing authority was justified in passing assessment order for the assessment years 1981-82 and 1983-84, both under KGST Act and CST Act, against Mr. Khalid Haji and Abdul Sathar?
>
> ii) Whether the assessing authority was justified in passing fresh assessment orders when the first appellate authority had specifically remanded the matter to re-do the matter in accordance with law against M/s Aries Spices represented by Abdul Rehman?

14. After going through the orders passed by the assessing authority, the first appellate authority and Tribunal, one thing is clear that M/s.Aries, Spices represented by its proprietor Mr. Abdul Rehman had gone before the registering authority seeking for registration under the provisions of the KGST Act and CST

Act. We are not concerned with the nature of business that was being carried on by M/s.Aries Spices. The registration certificate of the said firm was cancelled by the registering authority only on 17.6.1983.

15. The assessing authority, for the assessment years 1981-82 and 1983-84, had completed the assessment proceedings against M/s.Aries, Spices represented by its Proprietor Mr.Abdul Rehman by its order dated 8.3.1984. Aggrieved by the quantification made by the assessing authority, the assessee was before the first appellate authority. The first appellate authority, accepting the contentions of the assessee, had remanded the matter to the assessing authority to re-do the matter in accordance with law. While completing the assessment, the assessing authority could have proceeded only against M/s. Aries, Spices represented by its proprietor viz. Mr. Abdul Rehman. This is not done by the Department. The reasons are best known to them alone. Be that as it may.

16. In the instant case, instead of doing so, the assessing authority had thought it fit to make a fresh assessment order after utilising the information collected by him and the other officials of the department. According to the assessing authority Mr. K.P.Khalid Haji and Mr. K.P.Abdul Sathar were actually doing the business for M/s.Aries, Spices and Mr. Abdul Rehman was only a name-lender. Keeping this aspect of the matter in view, he has completed the assessment on 8.9.1986 against Mr. K.P. Khalid Haji and Mr. K.P. Abdul Sathar as if they are the registered dealers under the Act. The order so passed is confirmed by the appellate authority while rejecting the appeals filed by Mr.Khalid Haji and Mr.K.P.Abdul Sathar. In the second appeal filed, the Tribunal after analysis of the facts found in the assessment records has come to the conclusion,

that the assessing authority was not justified in passing the assessment orders in the years in question against Khalid Haji and Abdul Sathar.

17. This Court will not interfere in revision with the finding recorded by the Tribunal, unless it is demonstrably perverse. The Department is not able to point out such perversity in the findings and conclusions reached by the Tribunal. It is, no doubt, true that the Act does not prevent or prohibit the assessing authority to complete the assessment against the proper persons, but such assessments cannot be on mere assumption and presumption. In the instant case, the Tribunal which is the last fact finding authority after careful consideration of entire materials on record has come to the conclusion that Mr.Khalid Haji and Mr.K.P.Abdul Sathar had nothing to do with the business carried by M/s.Aries Spices represented by Mr.Abdul Rehman and accordingly has set aside the assessment orders passed against them. We are not inclined to disturb the finding of fact arrived by the Tribunal. Therefore, the interference with the orders passed by the Tribunal is not called for. Accordingly, the revision petitions requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/DK.